

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK**

**HEARING DATE: 4/26/2022  
HEARING TIME: 9:30 AM  
LOCATION: UTICA, NY**

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**IN RE: THOMAS M. SETTLE  
BEVERLY J SETTLE  
(last four ss.: 1341,6414)**

**CHAPTER 12**

**Chapter 12 Debtors**

**Case No.: 19-61705**

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**MOTION SEEKING VIOLATION OF THE AUTOMATIC STAY**

DEBTORS THOMAS M. SETTLE AND BEVERLY J. SETTLE, by and through their attorney, MAXSEN D. CHAMPION, ESQ. does hereby allege as follows:

1. Debtors filed for Chapter 12 relief on December 19, 2019 and were assigned case no. 19-61705.
2. Debtors' confirmed plan modifies the secured mortgage of Wells Fargo Mortgage wherein the claim is paid its claim in the amount of \$45,030.50 paid at 6.5% interest for a monthly payment of \$304.05 per month commencing upon confirmation.
3. To date the debtors have made any and all plan payments timely.
4. On April 9, 2021 the claim of Wells Fargo Bank was transferred to U.S. Bank National Association, not in its individual capacity but as trustee for RMTP Trust, Series 2021- BMM TT, hereinafter referred to as "Rushmore". (ECF Docket no. 63 dated April 9, 2021).
5. Throughout the past six months, the debtors have been getting notice of default directly delivered to the debtors from Rushmore relative to an alleged delinquency on their mortgage payments.

6. This collection activity has involved in person delivery of documents, which may include foreclosure paperwork. I have reviewed the Madison County Clerk's records and do not see a foreclosure having started, but I do recall the debtors receiving personally delivered collection documents.
7. I conveyed this concern to the Chapter 12 Trustee who indicated that Rushmore was returning their payments.
8. When contacted by the Chapter 12 Trustee, a representative from Rushmore indicated that there currently is no automatic stay and that this stay was lifted by operation of law.
9. A review of the court docket reflects no motion for relief from stay or notice to any interested party of any alleged default in the payments.
10. The collection activity of Rushmore is currently being done unilaterally and without any concern for the pending Chapter 12 and represents a clear violation of the automatic stay.
11. These are very cash strapped debtors who live milk check to milk check and it is with great difficulties that they have been making these Chapter 12 payments. The debtor's herd size is small and they only milk seasonally so they have to be very careful with their budget.
12. I would rely on the records of the Chapter 12 Trustee, but my understanding is that they have not missed any payments.
13. The debtors have also filed all operating reports to date.
14. The direct contact has eroded the relationship between the debtors and their attorney to the point where the debtors do not believe that their best interests are being

protected in this Chapter 12 proceeding.

15. The collection activity of RUSHMORE is clearly a violation of the debtors' automatic stay and debtors would request that this Court impress that upon RUSHMORE.

**WHEREFORE**, debtor respectfully requests an Order from this Court:

1. Finding the RUSHMORE has willfully violated the automatic stay in their continued collection activities against the debtors despite notice of the debtors' bankruptcy filing, participation in debtors confirmation and receipt of payments on their modified claim;
2. An award of damages against RUSHMORE sufficient to compensate the debtors for their losses as a result of the collection activities;
3. Sanctions against RUSHMORE for the costs associated with bringing a motion of this nature, including but not limited to attorneys fees, filing fees, etc.;
4. Sanctions seeking to impress upon RUSHMORE the solemnity of the bankruptcy code, its proceedings and the effect of the automatic stay.

Together with such other and further relief as this Court deems just and equitable.

DATED: March 18, 2022

/s/Maxsen D. Champion

Maxsen D. Champion, Esq.

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